IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

OP.No. 21944 of 2000(K)

PETITIONERS:
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1. **V.V. INDIRA, W/O. KOCHUKUTTAN PILLAI, RESIDING AT KIZHAKKEVELIYIL HOUSE, (PULIPARAMBU) AROOR.P.O., CHERTHALA.**

2. **M.M. SUJATHA, W/O. BABU.V.P., RESIDING AT VALIYAPARAMBIL HOUSE, MULAVUKAD NORTH, MULAVUKAD.P.O.**

BY ADV. SRI.A.V.XAVIER.

RESPONDENTS:
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1. **LABOUR COURT, ERNAKULAM.**

2. **SRI. N.V. PAUL, PROPRIETOR (DIED), ALANKAR PRINTERS, LISIE JUNCTION, KOCHI-18.**

3. **BABY PAUL, W/O. N.V. PAUL, (LATE), NEDUPARAMBIL HOUSE, KAKKANAD.P.O. - 682 030.**

4. **SAJU PAUL, S/O. N.V. PAUL (LATE), NADUPARAMBIL HOUSE, K.K. ROAD, MARADU.P.O - 682 304.**

5. **ABRAHAM PAUL, S/O. N.V. PAUL, (LATE), AUDITOR ERA SECTION, I.S. PRESS ROAD, ERNAKULAM.**

6. **SUJA PAUL, W/O. PAUL.P. KOLLINAL, KOLLINAL HOUSE, (D/O. LATE N.V. PAUL), MANEED.P.O, PIRAVOM.**

O.P. NO. 21944/2000-K:

**7. NIJA PAUL, D/O. N.V. PAUL (LATE),
NADUPARAMBIL, KILLITHOTTIL,
KUSUMAGIRI, KAKKANAD.**

**BY ADV. SRI.K.RAVIKUMAR,
ADV. SRI. P. RAMAKRISHNAN.**

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 36944/2000 IN O.P. NO. 21944/2000-K

DISMISSED

19/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGEMENT IN W.A. NO. 366/91 DTD. 01/12/98.

EXT.P.2: COPY OF THE ORDER IN C.P. NO. 46/89 DTD. 18/01/2000.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.21944 of 2000

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Dated this the 19th day of September, 2007.

JUDGMENT

Writ petitioners and two others were dismissed from service sometime in 1976. This resulted in an industrial dispute leading to an Award ordering their re-instatement with backwages. That Award was unsuccessfully challenged before this Court by the management. Against the decision of the learned Single Judge affirming the Award, the management carried an appeal which was dismissed at the stage of admission.

2. After about three years thereafter, the workmen invoked Section 33C(2) of the Industrial Disputes Act, 1947 on the ground that they have been refused relief in terms of the Award. The order passed by the Labour Court on that petition was set aside by this Court in writ proceedings ultimately by Ext.P2 judgment of the Division Bench

resulting in the remit of the claim petition.

3. On to the facts, it needs to be noticed that the claim petition was allowed ordering recovery of backwages upto 1986 while relief for the period from 1986 to 1989 was refused on the ground that the workmen had failed to report for duty within a reasonable time after the issuance of the judgment of the Division Bench affirming the Award. Admittedly, the workmen moved the claim petition by disclosing their willingness to rejoin only after three years of the judgment in the Writ Appeal. But, it was their specific contention that the Advocate, who was appearing for them before this Court had not informed them of the dismissal of the Writ Appeal. In so far as that contention is concerned, a perusal of Ext.P1 judgment would show that the Division Bench expected at least a spoon of reliable evidence and material before the accusation in that regard could be passed on to the counsel. It was also noticed by the Bench that evidence was wholly wanting. It was accordingly that

Ext.P1 order of remand was made.

4. After remand, all that happened was that the four claimants reiterated their version orally without bringing on record any other evidence, including any material to saddle the counsel with the responsibility of not informing them about the disposal of the Writ Appeal arising from the Award.

5. I may also at once notice that, the Division Bench had already noticed in Ext.P1 judgment that, going by the evidence before this Court, the petitioners were gainfully employed in the interregnum. But the learned counsel for the petitioners points out that the said statement relates only to two of the claimants and they are not parties to the proceedings, which are, as of now, at the instance of the other two claimants.

6. On the aforesaid premise, after having heard the

testimony of the claimants and also two of the legal representatives of the deceased employer, the Labour Court has concluded that no evidence was adduced by the claimants in support of their contention that they knew about the dismissal of the Writ Appeal only after three years of the judgment of the Division Bench and that the Advocate had not informed them the matter. This means that the quality of evidence and the materials on that pivotal question did not improve after Ext.P1 order of remand was made. The Labour Court held that the contention of the workmen that the reason for the delay was due to the failure of their Advocate to intimate them of the dismissal of the Writ Appeal had not been substantiated by reliable and cogent evidence.

7. Advertence to paragraph 5 of Ext.P2 order would show that sufficient opportunity was given and parties had, in fact, attempted to adduce evidence.

8. In the backdrop of the aforesaid materials, the Labour Court referred to the precedents mentioned in paragraph 10 of the impugned order and came to the conclusion that the workmen had failed to report for duty within a reasonable time after the Award and was therefore not entitled to backwages during the interregnum of nearly three years.

Within the parameters of Article 226 and 227 of the Constitution of India, I do not find any jurisdictional error or legal infirmity in the impugned Award. Writ petition fails. It is hence dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.21944 of 2000

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Dated this the 3rd day of October, 2007.

JUDGMENT

The matter is listed only for `to be spoken to' at the request of the learned counsel for the petitioners. Spoke. The earlier judgment stands.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.21944 of 2000

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JUDGMENT

Dated:19-9-2007

Thottathil B. Radhakrishnan, J.

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O.P.No.21944 of 2000

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JUDGMENT

Dated:3-10-2007